UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte RAYMOND G. MATHER, PAUL P. CARELLA,
SHULONG SUN, and ARTHUR L. THURSLAND

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Appeal 2007-4347
Application 09/475,364
Technology Center 3600

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Decided: December 14, 2007

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Before MURRIEL E. CRAWFORD, HUBERT C. LORIN, and
MICHAEL W. O'NEILL, *Administrative Patent Judges*.

LORIN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Mather, et al. (Appellants) seek our review under 35 U.S.C. § 134 of the
final rejection of claims 1 and 3-12. We have jurisdiction under 35 U.S.C. § 6(b)
(2002).

SUMMARY OF DECISION

We REVERSE.

THE INVENTION

The Appellants' claimed invention is to a system for tracking the receipt and internal movement of delivered items such as packages. The system comprises a portable data terminal for reading identification symbols, such as barcodes, on the items (Specification 3:20-26). The portable data terminal records the information in a data collection format. (Specification 4:20-23). Figures 3A and 11A show types of delivery data collection formats. The system further comprises "a base station capable of communicating with the portable data terminal for uploading electronic files to the portable data terminal in order to modify the data collection format" (Specification 4:23-25). A computer is an example of a base station (Specification 12:3). This "allow[s] the user to modify the data format according to the user's needs." (Specification 5:26-27). Thus, there is a communication connection between the portable data terminal and the base station. "Preferably, the base station communicates with the portable data terminal via a connection cradle." (Specification 5:1-2). But the communication may also be conducted by other means, e.g., wirelessly. (Specification 11:18-20). In either case, "[t]he base station [ ] is mainly used to create a new data collection format or modify an existing data collection format according to the user's needs" (Specification 11:23-25), which is then sent, via the connection, to the portable data terminal.

Claim 1, reproduced below, is representative of the subject matter on appeal.

1. A system for tracking receipt and internal movement resulting in a delivery or other final disposition status of items such as packages within an organization, wherein each item is sent by a sender and received from a carrier to be delivered to a recipient, said system comprising:

a) a portable data terminal programmed to:

(i) record information regarding the receipt of the item, and

(ii) record information regarding the internal movement of the item wherein the receipt information and the internal movement information are recorded with a data collection format;

b) a base station for communicating with the portable data terminal for uploading electronic files for modifying the data collection format; and

c) means for allowing a user to create one or more data collection formats at the base station, and to transmit the one or more data collection formats to the portable data terminal.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Tams	US 6,279,037 B1	Aug. 21, 2001
Rauber	US 6,182,053 B1	Jan. 30, 2001
Kadaba	EP 0 787 334 B1	Aug. 6, 1998

The following rejections are before us for review:

1. Claims 1, 3, and 5-12 are rejected under 35 U.S.C. § 103(a) as unpatentable over Tams and Rauber.

2. Claim 4 is rejected under 35 U.S.C. § 103(a) as unpatentable over Tams, Rauber, and Kadaba.

ISSUES

The first issue is whether the Appellants have shown that the Examiner erred in rejecting claims 1, 3, and 5-12 as unpatentable over Tams and Rauber. The second issue is whether the Appellants have shown that the Examiner erred in rejecting claim 4 as unpatentable over Tams, Rauber, and Kadaba. Both issues turn on whether the cited prior art would have led one having ordinary skill in the art to a system whereby a user can create data collection formats at the base station and transmit the data collection formats to the portable data terminal, and collect data in the data collection format.

FINDINGS OF FACT

We find that the following enumerated findings of fact (FF) are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

The scope and content of the prior art

1. Tams is directed to methods for collecting, storing, processing and using data, such as network traffic data, in computer networks.

2. Tams processes collected network traffic data into a common format (col. 6, ll. 13-19) for use in generating displays or network databases for future analysis (col. 6, ll. .56-62). According to Tams, "one of the major problems encountered with collecting and processing network traffic data is the numerous different counting techniques and data table storage formats that may be used by various probes in the same system." (col. 6, ll. 4-7).

3. Tams' process involves the use of probes, or remote monitoring devices (RMON), which "may include memory, a processor, an I/O interface device and a mass storage device, such as a disk drive" (col. 8, ll. 39-40). The probes are used to "collect and store network traffic data in one or more RMON2 tables (MIBS)" (col. 8, ll. 37-38). "MIB" stands for management-information base which is a table for storing network traffic data collected by a probe. (col. 2, ll. 29-33). RMON2 MIB is a standard set by the Internet Engineering Task Force "which increases the types of network traffic that can be monitored, the number of ways network traffic can be counted, and also the number of data formats which can be used for storing collected data" (col. 2, ll. 33-38).

4.   Tams' process also involves the use of a network management station.
        Each probe is coupled to the management station by way of a bus
        coupled to the I/O interface of the probe. (col. 8, ll. 57-62).

5.   Tams' network management station processes the network traffic data
        provided by the probes. "Network traffic data collected by a probe is
        normally stored internally within the probe until, e.g., being provided to a
        network management station." (col. 2, ll. 29-31). The data in the probes
        is provided in a RMON2-type formats. "To minimize the amount of data
        processing required to put a probe's network traffic data into the common
        format used by the management system [ ] network data is obtained from
        a probe using one of the available table formats with the format utilized
        being selected in the following order of preference:
        alMatrixTopN(Terminal Mode), alMatrixTopN(AllMode), alMatrix,
        nlMatrixTopN and nlMatrix." (col. 10, ll. 41-48). Each of these formats
        have certain characteristics. For example, "an alMatrixTopN (Terminal
        Mode) table has the advantage of requiring no format conversion
        operations." (col. 10, ll. 48-50).

6.   Tams' network management station processes the network data provided
        by the probes in the following way. "Identification of the probes which
        are coupled to the management system 150 [see Fig. 2], the data tables
        they support, and the selection of the data table to be used with each
        probe occur during execution, by CPU 154 [in the management station,
        see Fig. 2], of a management station initialization routine 300 [see Fig.

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4A]. The routine 300 is one of the initialization routines included in memory segment 171 [in the management station, see Fig. 2]." (col. 11, ll. 1-6). "Once a probe is detected, the initialization routine determines the network traffic table format that is to be used with the detected probe and stores that information in memory for future use, e.g., in determining what if any format conversions need to be performed on data obtained from the probe." (col. 11, ll. 19-23). For each detected probe, the initialization process proceeds through steps, as shown in Fig. 4A, which determine which table format will be used with each probe. (col. 11, ll. 24-27). During the initialization routine, it is determined which table the probe supports. (col. 11, ll. 28-30). Once that determination is made, the management station signals the probe to create a table and, if the creation is successful, the probe information in memory is updated to include an entry on the probe being initialized and to indicate that the probe's data is in the determined table format. (col. 11, ll. 34-47). If the table creation is unsuccessful, the operation proceeds to subsequent steps in the routine to determine the supported table until supported tables are successfully created for the data of each probe connected to the management station. (col. 11, ll. 48 – col. 12, l. 41). "Once the management system [ ] is initialized, collection, processing and storage of network data commences. ... Network traffic data, in the form of a data table, is supplied to the management station from each probe." (col. 12, ll. 55-66). "[T]he network traffic data is collected at periodic intervals from each of

the detected probes and converted … into [a] preselected format." (col. 13, ll. 18-23). The conversion involves a routine 600 [see Fig. 6A] executed by the CPU 154 [see Fig. 2] in the management station to generate a network traffic data table in a desired common format. See (col. 15, ll. 38-51). Once converted, the data can be stored.

7.   Rauber is directed to a method and apparatus for "managing and tracking inventory with the aid of a programmable computer that is particularly designed to take into account the unique difficulties associated with managing distressed inventory." (col. 2, ll. 47-52).

8.   Kabada relates to a parcel tracking system involving the use of portable data entry terminals, such as hand-held scanners, and processing units, such as a personal computer system, to perform tracking analysis on data collected from the parcels.

Any differences between the claimed subject matter and the prior art

9.   Tams shows a management station signaling a probe to create a table. step c) of claim 1 requires "means … to transmit the one or more data collection formats to the portable data terminal".

The level of skill in the art

10.   Neither the Examiner nor Appellants has addressed the level of ordinary skill in the pertinent arts of tracking items and data formatting. We will therefore consider the cited prior art as representative of the level of ordinary skill in the art. *See Okajima v. Bourdeau,* 261 F.3d 1350, 1355, 59 USPQ2d 1795, 1797 (Fed. Cir. 2001) ("[T]he absence of specific

findings on the level of skill in the art does not give rise to reversible

error 'where the prior art itself reflects an appropriate level and a need for

testimony is not shown'")

Secondary considerations

11.   There is no evidence on record of secondary considerations of non-
obviousness for our consideration.

PRINCIPLES OF LAW

"Section 103 forbids issuance of a patent when 'the differences between the

subject matter sought to be patented and the prior art are such that the subject

matter as a whole would have been obvious at the time the invention was made to a

person having ordinary skill in the art to which said subject matter pertains.'" *KSR*

Int'l Co. v. Teleflex Inc., 127 S.Ct. 1727, 1734 (2007). The question of

obviousness is resolved on the basis of underlying factual determinations including

(1) the scope and content of the prior art, (2) any differences between the claimed

subject matter and the prior art, (3) the level of skill in the art, and (4) where in

evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383

U.S. 1, 17-18 (1966). *See also KSR*, 127 S.Ct. at 1734 ("While the sequence of

these questions might be reordered in any particular case, the [*Graham*] factors

continue to define the inquiry that controls.")

ANALYSIS

Rejection of claims 1, 3, and 5-12 as unpatentable over Tams and Rauber.

We will not sustain the rejection because we are unable to find all the details of step c) of sole independent claim 1 in the cited references.

The Examiner found that Tams discloses all of the steps of claim 1 except for tracking packages. (Answer 5). The Examiner relied on the teaching in Rauber that "the management of inventory can be used for tracking inventory as it passes through various stages within the warehouse." (Answer 5). The Examiner determined that it "would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to track packages within an organization with the motivation of detecting movement to different locations." (Answer 5).

The Appellants argue that the cited prior art would not have rendered the claimed invention obvious because Tams does not show claimed step c) "means for allowing a user to create one or more data collection formats at the base station, and to transmit the one or more data collection formats to the portable data terminal." (Br. 9).

We find Appellants' argument persuasive.

We have reviewed Tams but do not see where the management station "transmit[s] the one or more data collection formats to the portable data terminal" as required by claim 1, step c). Tams appears to send a signal to the probe by which the probe creates a table format depending on the format the probe supports. FF 5. The Examiner considers this action to "represent the uploading of electronic files for modifying the data collection format, where uploading is represented by

signaling, then updating the memory with alMatrixTopN format." (Answer 11). However, step c) of claim 1 calls for "transmit[ing] the one or more data collection formats to the portable data terminal." Sending a signal does not necessarily mean the station is sending of a data collection format. Our reading of Tams is that the probe creates the format. (See FF 5). Therefore, there is no need for the station to send the format. The station sends a signal to the probe which causes the probe to create the format. This suggests that the station does not itself send the format. Further, the Examiner has not explained how sending a signal amounts to "transmit[ing] [a] data collection format." Without that explanation, the Examiner has not provided the necessary rationale to conclude that the invention would have been obvious over the cited art combination.

Rejection of claim 4 as unpatentable over Tams, Rauber, and Kadaba.

Claim 4 depends on claim 3 and ultimately on claim 1. The rejection of claim 4 suffers for the same reasons as given above for the rejection of claim 1, namely that the Examiner has not explained how Tams' signaling step equates to the claimed transferring step.

CONCLUSIONS OF LAW

We conclude the Appellants have shown that the Examiner erred in rejecting claims 1, 3, and 5-12 as unpatentable over Tams and Rauber and claim 4 as unpatentable over Tams, Rauber, and Kadaba.

DECISION

The decision of the Examiner to reject claims 1 and 3-12 is reversed.

JRG

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